

SERVICE DATE – MARCH 1, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1271X

SAVAGE, BINGHAM & GARFIELD RAILROAD COMPANY—DISCONTINUANCE OF
TRackage RIGHTS EXEMPTION—IN WHITING, IND.

Digest:¹ This decision allows Savage, Bingham & Garfield Railroad Company to discontinue its trackage rights over a 0.6-mile rail line owned by Elgin, Joliet and Eastern Railway Company in Whiting, Ind., subject to standard employee protective conditions.

Decided: February 27, 2019

On November 21, 2018, Savage, Bingham & Garfield Railroad Company (SBG) filed a petition under 49 U.S.C. § 10502 to (1) revoke the exemption that authorized SBG to operate pursuant to a trackage rights agreement entered into between SBG and Elgin, Joliet and Eastern Railway Company, an indirect rail carrier subsidiary of Canadian National Railway Company (collectively, CN), over a 0.6-mile rail line owned by CN in Whiting, Ind. (the Line), and (2) allow the trackage rights to terminate. The Line is located between milepost J 47.4 (south end of CN's Whiting Line) and Bridge Number 631 at or near milepost J 46.8 on CN's Calumet Spur on CN's Matteson Subdivision in Whiting.

On December 11, 2018, the Board served and published notice of SBG's filing in the Federal Register (83 Fed. Reg. 63,697). The Board's notice explained that under the circumstances, the appropriate procedure for the relief SBG seeks is a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue SBG's trackage rights over the Line, and instituted an exemption proceeding. No comments were filed in response to SBG's petition.² The Board will grant the petition for exemption, subject to standard employee protective conditions.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Replies were initially due by December 31, 2018. Because of the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, that deadline was extended to February 4, 2019. See Filings Submitted or Due to Be Submitted During Partial Fed. Gov't Shutdown, EP 751, slip op. at 1 (STB served Jan. 28, 2019).

BACKGROUND

SBG acquired the trackage rights pursuant to an agreement with CN, dated March 5, 2012. See Savage, Bingham & Garfield R.R.—Trackage Rights Exemption—Elgin, Joliet & E. R.R., FD 35611 (STB served Apr. 11, 2012). According to SBG, the trackage rights were “a component of the business relationship among CN, [SBG] and noncarrier affiliates of [SBG] to provide transportation service to a key customer near the Whiting [Y]ard.” (Pet. 2.) Concurrent with the trackage rights agreement, a noncarrier affiliate of SBG and CN entered into a track lease agreement to use tracks within CN’s Whiting Yard for storage of railcars by CN’s industrial customers. (Id. at 2, Ex. 2 § 21.2.) The track lease agreement permits either party to terminate the agreement. (Id., Ex. 5, at ¶ 14.) By its terms, the trackage rights agreement “shall automatically terminate upon termination of the [t]rack lease [a]greement.” (Id., Ex. 2, at § 21.2.)

SBG represents that, because of changes in shippers’ business operations, the railcar movement and storage work in CN’s Whiting Yard pursuant to the contract with CN has ended. (Id. at 3.) As a result, according to SBG, CN terminated the track lease agreement, which caused the trackage rights agreement to terminate by its own terms. (Id.) Therefore, SBG states that it no longer operates or has a contractual right to operate on the Line pursuant to the trackage rights agreement. (Id.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The Line’s shippers have neither opposed the proposed discontinuance nor indicated that they would be adversely affected by it. An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15). Other aspects of the RTP will not be adversely affected by the use of the exemption process.

Regulation of the proposed transaction under 49 U.S.C. § 10903 is also not necessary to protect shippers from the abuse of market power.³ As SBG notes in its petition, “it was the customers themselves that ended their operations.” (Pet. 5.) No shipper or other interested party has filed comments opposing the proposed discontinuance.

³ Because this decision finds that regulation is not necessary to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope. See 49 U.S.C. § 10903(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the Board will impose upon SBG the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

No notices of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 to subsidize continued rail service were filed by the December 21, 2018 deadline. See 49 C.F.R. § 1152.27(c)(1)(i). And, because this is a discontinuance of trackage rights and not an abandonment, the Board need not consider OFAs to acquire the Line, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Line under 49 U.S.C. § 10905. Furthermore, the environmental reporting requirements under 49 C.F.R. § 1105.7 and historic reporting requirements under 49 C.F.R. § 1105.8 do not apply. See 49 C.F.R. §§ 1105.6(c) and 1105.8(b).

Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of trackage rights by SBG, as described above, subject to the employee protective conditions in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

2. This exemption will be effective on March 31, 2019.

3. Petitions to reopen and stay the effectiveness of the exemption must be filed by March 18, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.